



KeyCite Blue Flag – Appeal Notification
 Petition for Certiorari Docketed by CACI PREMIER TECHNOLOGY, INC.
 v. SUHAIL NAJIM ABDULLA AL SHIMARI, ET AL., U.S., November
 19, 2019

775 Fed.Appx. 758 (Mem)
 This case was not selected for
 publication in West's Federal Reporter.
 See Fed. Rule of Appellate Procedure 32.1
 generally governing citation of judicial
 decisions issued on or after Jan. 1, 2007. See
 also U.S.Ct. of Appeals 4th Cir. Rule 32.1.
 United States Court of Appeals, Fourth Circuit.

Suhail Najim Abdullah AL SHIMARI; Salah
 Hasan Nusaif Jasim Al-Ejaili; Asa'ad Hamza
 Hanfoosh Al-Zuba'e, Plaintiffs – Appellees,
 and

Taha Yaseen Arraq Rashid; Sa'ad
 Hamza Hantoosh Al-Zuba'e, Plaintiffs,
 v.

CACI PREMIER TECHNOLOGY, INC.,
 Defendant and Third-Party Plaintiff – Appellant,
 and
 Timothy Dugan; CACI International,
 Inc.; L-3 Services, Inc., Defendants,
 v.

United States of America; John
 Does 1-60, Third-Party Defendants.
 United States of America, Amicus Curiae,
 The Center for Justice and Accountability;
 Retired Military Officers; Earthrights
 International, Amici Supporting Appellee.

No. 19-1328

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 Argued: July 10, 2019

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 Decided: August 23, 2019

Appeal from the United States District Court for the Eastern
 District of Virginia, at Alexandria. Leonie M. Brinkema,
 District Judge. (1:08-cv-00827-LMB-JFA)

Attorneys and Law Firms

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Before FLOYD, THACKER, and QUATTLEBAUM, Circuit
 Judges.

Opinion

Dismissed by unpublished opinion. Judge Floyd wrote the
 opinion, in which Judge Thacker joined in full. Judge
 Quattlebaum wrote a separate opinion concurring in the
 judgment.

Unpublished opinions are not binding precedent in this
 circuit.

FLOYD, Circuit Judge:

*759 Plaintiffs are Iraqi citizens who allege that they were
 tortured while detained at Abu Ghraib. Defendant CACI
 Premier Technology, Inc. (CACI) is a U.S. government
 contractor that provided civilian interrogators at Abu Ghraib.
 Plaintiffs allege that CACI interrogators abused them—
 or conspired in or aided and abetted their abuse—in
 ways amounting to torture and other war crimes. In this

interlocutory appeal, CACI asks us to reverse the district court's order denying it derivative sovereign immunity.

We dismiss because we lack jurisdiction. This conclusion follows from the reasoning of a prior en banc decision in which we dismissed CACI's interlocutory appeal from the district court's denial of similar defenses. *Al Shimari v. CACI Int'l, Inc.*, 679 F.3d 205, 213 (4th Cir. 2012) (en banc).

*760 As relevant here, we explained that "fully developed rulings" denying "sovereign immunity (or derivative claims thereof) may not" be immediately appealable. *Al Shimari*, 679 F.3d at 217 n.3. Indeed, we have never held, and the United States government does not argue, that a denial of sovereign immunity or derivative sovereign immunity is immediately reviewable on interlocutory appeal.

But even if a denial of derivative sovereign immunity may be immediately appealable, our review is barred here because there remain continuing disputes of material fact with respect to CACI's derivative sovereign immunity defenses. * See *id.* at 221 (distinguishing between the interlocutory appealability of immunity denials premised on "fact-based" versus "abstract" issues of law and noting that only the latter supply a proper foundation for immediate appeal). Below, the district court concluded that even if the United States were entitled to sovereign immunity, "it is not at all clear that CACI would be extended the same immunity" due to continuing factual disputes regarding whether CACI violated the law or its contract. *Al Shimari v. CACI Premier Tech., Inc.*, 368 F. Supp. 3d 935, 970 (E.D. Va. 2019). The district court also denied CACI's motion for summary judgment on plaintiffs' ATS claims based on evidence showing "material issues of fact that are in dispute," J.A. 2238–50, and these factual disputes are substantially related, if not identical, to the elements of CACI's derivative sovereign immunity defense. Given these continuing factual disputes, this appeal does not turn on an abstract question of law and is not properly before us.

For these reasons, this appeal is

DISMISSED.

QUATTLEBAUM, Circuit Judge, concurring in judgment:

Footnotes

The order appealed involves important issues with potentially far-reaching implications. Despite that, our precedent compels me to join the judgment of the Court. In *Al Shimari v. CACI International, Inc.*, our Court, sitting en banc, determined that the only potential basis for interlocutory appeal here would be an appeal from an order on derivative sovereign immunity that involves an abstract issue of law. *Al Shimari v. CACI Int'l, Inc.*, 679 F.3d 205, 220–22 (4th Cir. 2012) (en banc). CACI insists we have such a situation and argues plaintiffs present no evidence representatives of CACI engaged in any of the alleged improper conduct as to these plaintiffs. But from my review of the record, I cannot reach that conclusion as a matter of law. Therefore, I agree the requirements for us to exercise appellate jurisdiction for an interlocutory appeal are lacking.

However, I write separately because in contrast to the majority's reading of the case, *Al-Shimari* explicitly held that the denial of derivative sovereign immunity may be appealable if the appeal involves an "abstract issue of law" or a "purely legal question." 679 F.3d at 221–22. We as a panel do not have the authority to alter that previous conclusion.

Yet despite this disagreement, being bound by our precedent, I concur with the majority's judgment. But I do so only reluctantly. Our narrow interpretation of the collateral order doctrine in this case has taken us down a dangerous road. This proceeding has allowed discovery into sensitive *761 military judgments and wartime activities. It has also opened the door to an order that the United States has no sovereign immunity for claims that our military activities violated international norms—whatever those are. These may seem like minor inconveniences given the conduct at issue has been uniformly condemned and because the defendant here is a private contractor. But while we have no jurisdiction to address them now, the implications from these proceedings are potentially quite significant. We will see whether this case progresses to a point where we have jurisdiction to address the important questions it raises.

All Citations

775 Fed.Appx. 758 (Mem)

- * Even if we assumed that our jurisdiction would permit us to determine whether CACI would be entitled to derivative sovereign immunity if the plaintiffs succeeded in proving their factual allegations, we would not, and do not, have jurisdiction over a claim that the plaintiffs have not presented enough evidence to prove their version of events. *Id.* at 221.

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